

## REMARKS

After entry of this amendment, claims 1 – 10 and 15 – 24 are pending in the application. Claims 1 – 10 and 15 – 24 have been amended. Claims 11 – 14 and 25 – 27 have been canceled. Reconsideration of the application as amended is requested.

In the Office Action dated August 24, 2005, the abstract of the disclosure stands objected to for format. Specifically, the Examiner objects to the inclusion of “Fig. 4” in the abstract and recommends deletion. The Examiner’s recommendation has been adopted and a revised abstract is included in this Amendment. It is therefore submitted that the objection to the abstract is overcome.

Claims 4, 5, 7, 10 – 14, and 18 – 24 stand objected to as being in improper form. Specifically, the claims are in multiple dependent format and depend from another multiple dependent claim. Claims 4, 5, 7, 10 and 18 – 24 have been amended to remove multiple dependencies. Claims 11 – 14 have been cancelled. It is therefore submitted that the objection to the claims is overcome.

Claims 1 – 3, 15 – 17, and 27 stand rejected under 35 U.S.C. § 112, second paragraph, on various grounds. The informalities identified by the Examiner have been corrected in this Amendment. It is therefore submitted that the rejection of the claims under 35 U.S.C. § 112, second paragraph, is overcome.

Claims 1 – 3, 15 – 17, and 25 – 27 stand rejected under 35 U.S.C. § 101. The Examiner has recommended amending the preamble to recite a “computer implemented method” and the Examiner’s recommendation with respect to claims 1 – 3 has been adopted. Applicants respectfully traverse with respect to claims 15 – 17 since these claims do not recite a method, but rather recite a device. Claims 25 – 27 have been cancelled. It is therefore submitted that the rejection of the claims under 35 U.S.C. § 101 is overcome.

Claims 25 and 26 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Pat. No. 5,741,215, to D’Urso. Claims 25 and 26 have been cancelled in this Amendment. It is therefore submitted that the rejection of the claims under 35 U.S.C. § 102 is overcome.

Claims 1 – 3, 15 – 17, and 25 – 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,946,370 to Alder et al. in view of U.S. Pat. No. 6,463,351 to Clynch. Claims 25 – 27 have been cancelled. Claims 1 and 15 have been similarly amended to clarify that the curvature recited in the claims is the curvature of the spine and not the curvature of an outer surface of a single vertebra. The amendments to claims 1 and 15 have antecedent basis in the application, especially page 11, line 32. It is submitted that claims 1 and 15 define over the art and are in suitable condition for allowance. In particular, neither Alder et al. nor Clynch teach or


suggest determining a curvature type of the patient's spine from a predefined number of curvature types stored in a data base with a curvature determination device on the basis of the patient's data wherein the curvature type is defined by a number of points of deflection of an abstract spine and one or more directions of curvature of the abstract spine. Adler et al. teaches a method and apparatus for determining the curvature of an outer surface of a single vertebra. Adler et al. does not teach or suggest correlating the curvature of the patient's spine with one of a plurality of curvature types as recited in the claims. Clynch teaches a method and apparatus for producing a medical device that requires making a model of the body part to which the device will engage. Clynch does not teach or suggest correlating the curvature of the patient's spine with one of a plurality of curvature types as recited in the claims. It is therefore submitted that the rejection under 35 U.S.C. § 103(a) is overcome and claims 1 and 15 are in suitable condition for allowance. Claims 2 – 10 depend from claim 1 and claims 16 – 24 depend from claim 15; these claims are therefore also in suitable condition for allowance.

It is submitted that the amendments have antecedent basis in the application as filed and that the amendments do not add new matter to the application. It is further submitted that the amendments place the claims of the application in suitable condition for allowance; notice of which is respectfully requested. If the Examiner believes that prosecution of the application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicants' attorney at the telephone number listed below.

**Respectfully submitted,**

**HOWARD & HOWARD ATTORNEYS**

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